Supreme Court, U.S.
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No. 99-132

IN THE

Supreme Court of the United States

TRACY E. MULLIGAN, JR.,

Petitioner,

v.

ASSOCIATES LEASING, INC., MILLER & MILLER AUCTIONEERS, INC., URBAN N. ZINK CONTRACTORS, INC., MARK J. FRIEDMAN and CHARLES J. MILLER, INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT ASSOCIATES LEASING, INC.

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QUESTIONS PRESENTED

I. Should this Court grant certiorari to decide whether the United States Bankruptcy Court for the District of Maryland had subject matter jurisdiction over a state-court complaint challenging a bankruptcy court-authorized sale of property of the estate, when the bankruptcy court merely applied well-settled principles of law to a simple set of facts?

II. Was the United States Court of Appeals for the Fourth Circuit correct when it affirmed the decision of the United States District Court for the District of Maryland, which affirmed the Bankruptcy Court's imposition of sanctions against Petitioner and Joanne A. Allnutt for filing frivolous and meritless pleadings in the Bankruptcy Court?

III. Was the United States Court of Appeals for the Fourth Circuit correct when it found that Petitioner and Joanne A. Allnutt violated FED. R. APP. P. 38 and imposed sanctions in the amount of costs and attorneys' fees relating to the appeal from the District Court to the Court of Appeals?

PARTIES TO THE PROCEEDINGS BELOW

The parties below were Associates Leasing, Inc.; Miller & Miller Auctioneers, Inc.; Urban N. Zink Contractors, Inc.; Mark J. Friedman, Trustee in Bankruptcy for Fred W. Allnutt; Sr., Charles J. Miller, Inc.; Joanne A. Allnutt and Tracy E. Mulligan, Jr. The cover of the Petition for Writ of Certiorari indicates that Joanne A. Allnutt is the sole Petitioner in this matter. However, Mr. Mulligan indicates on page 1 of the Petition that he, not Mrs. Allnutt, is the Petitioner herein. Mr. Mulligan further states at page 2 of the Petition that Mrs. Allnutt "has instructed [him] not to proceed on her behalf."

STATEMENT PURSUANT TO RULE 29.6

Respondent Associates Leasing, Inc. is a wholly-owned subsidiary of Associates Commercial Corporation, which is a wholly-owned subsidiary of Associates Investment Company, which is a wholly-owned subsidiary of Associates Corporation of North America, which is a wholly-owned subsidiary of Associates First Capital Corporation. Associates First Capital Corporation is a publicly-held corporation, the shares of which are traded on the New York Stock Exchange. There is no other publicly-held corporation, or other publicly-held entity, that has a direct financial interest in the outcome of the litigation.

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STATEMENT OF THE CASE

A. Course of Proceedings

This case is an adversary proceeding arising out of a bankruptcy case entitled *In re Fred W. Allnutt, Sr.*, Case Number 92-5-7401-JFS (the "Bankruptcy Case"). Joanne A. Allnutt, a litigant in proceedings below, is the spouse of Fred W. Allnutt, Sr. On September 27, 1996, Mrs. Allnutt, through her attorney, Tracy E. Mulligan, Jr., filed a civil action (the "Complaint") in the Circuit Court for Howard County, Maryland (the "State Court") against Associates Leasing, Inc. ("Associates"), Miller & Miller Auctioneers, Inc., Charles J. Miller, Inc. and Urban N. Zink Contractors, Inc. (App. 23). In her Complaint, Mrs. Allnutt sued for conversion and detinue and claimed to be a "tenant by the entireties" with respect to certain heavy construction equipment sold pursuant to authorization given by the United States Bankruptcy Court for the District of Maryland – Baltimore Division (the "Bankruptcy Court") in the Bankruptcy Case (App. 23). Mrs. Allnutt also asked for a judgment against Associates for $19,720,464.74.

Associates, Miller & Miller Auctioneers, Inc. and Charles J. Miller, Inc. promptly removed the Complaint to the Bankruptcy Court, thereby commencing three adversary proceedings (App. 24-25). Upon Motion of Mark J. Friedman, the Chapter 7 Trustee (the "Trustee") in Mrs. Allnutt's husband's Bankruptcy Case, the Bankruptcy Court allowed the Trustee to intervene in the adversary proceedings and consolidated the adversary proceedings (App. 25). (Associates, Miller & Miller Auctioneers, Inc., Charles J. Miller, Inc. and the Trustee are hereinafter collectively referred to as "Defendants.")

Defendants filed several motions, including motions to dismiss the Complaint and motions for sanctions against Mrs. Allnutt and Mr. Mulligan (App. 25). Mrs. Allnutt also filed several pleadings in the Bankruptcy Court, including motions to remand the Complaint to the State Court and oppositions to the Defendants' various motions and the Trustee's motion to intervene (App. 25). The Bankruptcy Court entered an Order Consolidating Adversary Proceedings on February 13, 1998, consolidating the three adversary proceedings under the earliest-filed one, *Joanne A. Allnutt v. Associates Leasing, Inc.*, Adv. Proc. No. 96-5598-JS (the "Adversary Proceeding") (App. 25).

The Bankruptcy Court held a hearing with respect to all open motions on February 24, 1997 and on March 20, 1998, the Bankruptcy Court entered a Memorandum Opinion and Order (the "Memorandum Opinion") wherein the Honorable James F. Schneider ordered the following relief:

(1) Granting the Trustee's motion to intervene;

(2) Denying Mrs. Allnutt's motion to remand the Adversary Proceeding to the State Court;

(3) Granting Defendants' motions to dismiss the Adversary Proceeding(s); and

(4) Granting Defendants' motions for sanctions against Mrs. Allnutt and Mr. Mulligan, jointly and severally, in the amount of $66,929.01 (App. 63).

(5) Imposing a permanent injunction prohibiting Mrs. Allnutt, her husband and their insiders and agents from initiating any further lawsuits in state and

> federal courts contesting the validity of the Bankruptcy Court-authorized sale of Fred Allnutt's assets (App. 66).

The sum of $66,929.01 represented the aggregate amount of attorneys' fees incurred by Defendants in responding to and defending against the Complaint and Mrs. Allnutt's various other filings in this case (App. 59) from the date the Complaint was filed until the February 24, 1998 hearing.

After Mrs. Allnutt and Mr. Mulligan failed to remit $66,929.01 to the Bankruptcy Court as required pursuant to the Memorandum Opinion, the Bankruptcy Court entered orders on April 24, 1998 granting final money judgments against Mrs. Allnutt and Mr. Mulligan, jointly and severally, and in favor of Defendants for the respective amounts claimed by Defendants in their motions for sanctions (Mr. Mulligan omitted this judgment from his Appendix filed with the Petition.). Associates domesticated its final judgment, in the amount of $34,988.36, in several counties in the State of Maryland, and subsequently scheduled a sheriff's sale of certain real property owned by Mrs. Allnutt in Worcester County, Maryland for March 11, 1999 (the "Sheriff's Sale").

Mrs. Allnutt and Mr. Mulligan filed a joint appeal from the adverse summary judgment against Mrs. Allnutt and the permanent injunction and sanctions imposed upon both of them (App. 5). On September 25, 1998, the United States District Court for the District of Maryland (the "District Court") affirmed the findings and Orders of the Bankruptcy Court, but declined to impose additional sanctions upon Mrs. Allnutt and Mr. Mulligan (App. 7), apparently broadly construing a statement made by the Bankruptcy Judge that

if Mrs. Allnutt and Mr. Mulligan noted an appeal, sanctions would not be imposed merely because such an appeal was noted. Mrs. Allnutt and Mr. Mulligan appealed the District Court's affirmance of the Bankruptcy Court's rulings to the United States Court of Appeals for the Fourth Circuit (the "Court of Appeals"). Associates filed a cross-appeal to the Court of Appeals, seeking a reversal of the District Court's decision not to impose sanctions upon Mrs. Allnutt and Mr. Mulligan on the basis of their frivolous appeal from the Bankruptcy Court.

In addition to its cross-appeal, Associates also filed a Motion for Sanctions against Mrs. Allnutt and Mr. Mulligan, and a Petition for Extraordinary Writ with respect to the anticipated proceeds of the Sheriff's Sale. On March 9, 1999, the Court of Appeals entered an order affirming the judgment of the District Court and granting Associates' Motion for Sanctions and Associates' Petition for Extraordinary Writ (App. 2). Mrs. Allnutt and Mr. Mulligan filed a Petition for Rehearing and Petition for Rehearing En Banc, which was denied by the Court of Appeals on April 6, 1999 (App. 70). On July 6, 1999, Mr. Mulligan filed a Petition for Writ of Certiorari with this Court.

B. Statement of Facts

On October 9, 1992 (the "Petition Date"), Fred W. Allnutt, Sr. filed a voluntary petition for relief pursuant to Chapter 11 of Title 11, United States Code (Title 11, United States Code is referred to as the "Bankruptcy Code" herein.) (App. 13). Fred Allnutt's bankruptcy filing allegedly was precipitated by an Internal Revenue Service ("IRS") seizure of the premises and assets of JFC Excavating ("JFC"), a business owned by Fred Allnutt (App. 12-13). The IRS seized

Fred Allnutt's property due to a tax assessment levied against Fred Allnutt but unpaid by him (App. 12). The items seized by the IRS included but were not limited to the equipment now claimed by Mrs. Allnutt in her Complaint (the "Property") (App. 13).

A review of the record in the Bankruptcy Case and the instant matter reveals that Mrs. Allnutt made no claim of any interest in the Property until almost four years *after* the IRS seized the Property. Mrs. Allnutt did not file a bankruptcy petition, nor did she commence or join other litigation related to the IRS seizure or the assets affected thereby, in which litigation her husband and at least two adult children were involved. The litigation included *Fred Allnutt v. United States,* Case No. S92-2778 filed October 2, 1992, involving twenty-three parties claiming interests in the Property (notably *not* including Joanne Allnutt), and a second case, *JFC Excavating v. United States,* Case No. S92-2834, filed October 7, 1992, involving five claimants (collectively, the "District Court Litigation"). Mrs. Allnutt's entire family and their various companies were fighting over ownership of the Property in an apparent attempt to assist her husband, Fred Allnutt, to evade certain federal taxes (App. 12). Mrs. Allnutt attended hearings concerning numerous competing claims to ownership of the Property, including claims lodged by her children (App. 27). Mrs. Allnutt also attended the hearing that resulted in the Bankruptcy Court's approval of the sale of the Property by the Trustee (App. 27). Despite her physical attendance at the various proceedings concerning ownership and disposition of the Property, and despite the embroilment of her entire family in numerous hotly-contested controversies concerning ownership of the Property, Mrs. Allnutt *never once* alleged any interest therein.

The District Court Litigation, assigned to the Honorable Frederic N. Smalkin of that Court, concerned Allnutt family allegations that Fred Allnutt did not actually own any of the assets seized by IRS (including the Property) (App. 15). The apparent purpose for the commencement of the District Court Litigation was to attempt to shield Fred Allnutt from tax liability related to his ownership of JFC (App. 15). On June 21, 1993, Judge Smalkin issued a Memorandum Opinion and Order and Judgment in the District Court Litigation wherein the Court found that the assets in question were indeed Fred Allnutt's assets, that the assets belonged to no one else, and therefore, were assets of the Fred Allnutt bankruptcy estate (App. 15-16).

Judge Smalkin further entered an order foreclosing all interests of the parties, other than the bankruptcy trustee and the IRS, to the assets in question (App. 15). Shortly thereafter, on September 29, 1993, the Bankruptcy Court entered an Order authorizing the sale by the Trustee of substantially all of the business operations and assets of JFC Excavating, free and clear of all liens and encumbrances (the "Sale Order") (App. 16). The sale was consummated in accordance with the Sale Order and substantially all of Fred Allnutt's business assets, including the Property, were sold (App. 18). Associates provided lease financing to Fred Allnutt's friend and new employer, Nicholas Mangione, to enable Mr. Mangione to acquire the Property for use in an excavating company that would employ Fred Allnutt and his sons.

On November 16, 1994, Mrs. Allnutt filed a lawsuit in Howard County Circuit Court against Metro Recovery, Ltd. and Charles V. Lewis, Jr., which case was removed to this Court (App. 23, n.10). Mrs. Allnutt sought to obtain

possession of certain of Fred Allnutt's other property that also was sold pursuant to the Sale Order. (*Id.*). Mrs. Allnutt dismissed that litigation on March 5, 1996. (*Id.*)

On September 27, 1996, the eve of the expiration of Maryland's three-year statute of limitations for certain causes of action and well after the expiration of the period for objecting to the Sale Order, Mrs. Allnutt filed the Complaint in this case alleging that Associates, Miller & Miller Auctioneers, Inc., Charles J. Miller, Inc. and Urban N. Zink Contractors, Inc. were in possession of certain Property which "is owned by the Plaintiff, Joanne Armstrong Allnutt as tenant by the entirety." (*sic*) (App. 24). Lodging claims based upon theories of conversion and detinue, Mrs. Allnutt demanded that Associates and its codefendants return the Property and compensate her for the deprivation of its use in the total amount of Sixty-one Million Seventy-nine Thousand Nine Hundred Eighty dollars and Ninety-seven cents ($61,079,980.97) (App. 24).

Associates immediately removed the Complaint to the Bankruptcy Court and moved to dismiss, as did the other Defendants (App. 25). The Bankruptcy Court treated Defendants' motions to dismiss as motions for summary judgment, and granted judgment as a matter of law in favor of Defendants (App. 47, 53). The Bankruptcy Court – echoing Judge Smalkin's strong words in the District Court Litigation – determined that the Complaint was "so transparently sham and fraudulent that no reasonable finder of fact could determine there to be a genuine dispute as to a material fact." (App. 52-53). The Bankruptcy Court also found that the filing by Mr. Mulligan and Mrs. Allnutt of a "frivolous and fraudulent claim" in the State Court, "a non-bankruptcy forum that did not enjoy a knowledge of

the history of the bankruptcy case," exhibited a "blatant disregard for the jurisdiction and authority of the federal courts" in this matter (App. 54). The Bankruptcy Court further found that Mr. Mulligan and Mrs. Allnutt committed knowing and intentional violations of FED. R. BANKR. P. 9011 by continuing to litigate their meritless, frivolous claims in the Bankruptcy Court despite warnings that to do so may result in the imposition of sanctions (App. 53-59). Mr. Mulligan and Mrs. Allnutt persisted, undeterred by the Bankruptcy Court's clear and unambiguous warnings. Therefore, the Bankruptcy Court imposed sanctions against Mr. Mulligan and Mrs. Allnutt, jointly and severally, in the amount of Defendants' reasonable costs and attorneys' fees (App. 59).

Mrs. Allnutt and Mr. Mulligan failed and refused to pay the amount of Associates' final judgment (the "Judgment") in the amount of $34,988.36. In connection with the Sheriff's Sale, Associates expended a considerable amount of money in enforcing the Judgment, including but not limited to attorneys' fees, advertising costs, auctioneer's fees, sheriff's fees, title reports and environmental reports. The total amount owed to Associates as of March 11, 1999 (the date of the Sheriff's Sale), pursuant to the Judgment and pursuant to the imposition of additional sanctions by the Court of Appeals, was $79,211.66. This amount was paid to Associates on the morning of March 11 in order to prevent the auction sale of certain real property in Worcester County, Maryland owned by Mrs. Allnutt. After receipt of payment of the $79,211.66, Associates filed Notices of Satisfaction in every jurisdiction in which Associates previously domesticated the Judgment, fully expecting that the Court of Appeals' ruling would finally bring closure to this case. Associates' expectations were proven to be wrong when Mr. Mulligan filed the Petition, on the last day of the period within which to do so.

SUMMARY OF ARGUMENT

This case does not present a conflict among the circuits, nor does it present any important issue that would warrant the granting of a Writ of Certiorari. Instead, it represents but the latest chapter in a long history of hostility towards the judicial system and innocent third parties by Fred. W. Allnutt, Sr., his family and associates. The saga of Fred Allnutt, his property and his career as a tax protestor has wound its way from the State Court, through the Bankruptcy Court, the District Court and the Court of Appeals for over six years. The issues and claims presented by the Petition have been, time and time again, determined to be completely and utterly without merit.

In accordance with SUP. CT. R. 16, Associates wishes to address the numerous misstatements of fact and law present in the petition that bear on what issues properly would be before the Court if certiorari were granted. Since Mr. Mulligan is the only petitioner, Associates avers that the only proper "Question Presented" is whether the lower courts properly imposed sanctions upon him. Of course, the other issues that deal with the merits of the Mrs. Allnutt's Complaint are relevant to the issue of the propriety of sanctions, but these are merely "sub-issues" that need not be addressed if this Court determines that the imposition of sanctions was factually and procedurally appropriate. This Brief in Opposition will deal largely with the reasons why the Petition should not be granted,

and not with Mr. Mulligan's arguments that go to the merits of Mrs. Allnutt's Complaint. For the sake of brevity, Associates incorporates by reference the Bankruptcy Court's Memorandum Opinion, found at App. 9.

The "Questions Presented" are also incorrect in several other areas. For instance, the first question posed by Mr. Mulligan ("Did the Court of Appeals err in approving sale from individual's bankruptcy estate of property in which a co-owner (wife) had an interest, without compensation to the co-owner?") is nonsensical, since the Court of Appeals, in its March 9, 1999 Order, said nothing about the sale of the Property by the Trustee. The Sale Order was entered by the Bankruptcy Court on September 29, 1993. Neither Mrs. Allnutt nor any other party objected to the entry of the Sale Order. The time period for such objection is long since expired and the Sale Order is not subject to review by any court at this point in time (App. 51). The other errors and misstatements contained in the Petition are addressed *infra*.

REASONS FOR DENYING THE WRIT

A.

THERE IS NO CONFLICT BETWEEN FEDERAL CIRCUITS; THE COURT OF APPEALS APPLIED WELL-SETTLED PRINCIPLES OF BANKRUPTCY LAW IN DETERMINING THE ISSUES AND CLAIMS BEFORE IT.

In his Petition, Mr. Mulligan charges the Court of Appeals with "vitiat[ing] the protections accorded to a spouse as a joint owner of property with a bankrupt" by affirming the District Court's affirmance of the Bankruptcy Court's

grant of summary judgment against Mrs. Allnutt (Pet. 5). Contrary to these allegations, the Court of Appeals merely applied black-letter law to the facts before it and arrived at the inescapable conclusion that the Complaint was meritless and frivolous, and that Mrs. Allnutt and Mr. Mulligan were deserving of sanctions. This Court need look no further than Mr. Mulligan's Petition for ample evidence of behavior fully warranting the imposition of sanctions by the Court of Appeals and the Bankruptcy Court, which conduct also merits the further imposition of damages pursuant to SUP. CT. R. 42.2.

1. The Property sold by the Trustee was not "entireties property" and Mrs. Allnutt did not have a recognizable legal or equitable interest in the Property.

Mr. Mulligan first argues that Mrs. Allnutt possesses a joint interest, "presumably tenancy by the entireties in the Property described in the Complaint, started in 1967, and continuing through to the present time." (Pet. 7). This contention is wholly unsupported by the instant facts. As District Judge Smalkin stated in his Memorandum Opinion dated June 21, 1993, the assets of JFC, which includes the Property, were the sole property of Fred Allnutt (App. 15-16). The Property was never conveyed to the marital unit, and the four essential common law unities – time, title, interest and possession – never existed (App. 50). Therefore, Mrs. Allnutt was never a co-owner in the Property and the elements of a "tenancy by the entireties" do not exist.

Mr. Mulligan proceeds to expound on the general principles regarding property of a bankruptcy estate, and the status of entireties property with respect thereto.

Mr. Mulligan's recitation of the law is largely correct except when he applies it to the facts of this case. As he has since the filing of the Complaint, Mr. Mulligan fails or refuses to understand that the Property was never held by Mr. and Mrs. Allnutt as "entireties property." Mr. Mulligan never did and cannot now establish that the Property was owned by Mr. and Mrs. Allnutt as entireties property, and therefore the argument that Mrs. Allnutt has any rights therein must fail. Every court that has addressed the matter concluded that the Property was held by JFC, a sole proprietorship owned solely by Fred Allnutt (App. 51). Mr. Mulligan concludes this portion of his Petition with the following statement: "To the extent that the Court of Appeals departs from the foregoing principles to deprive a wife, who had a multi-million dollar interest separate from that of her husband, of her estate, the decision raises questions of discrimination, and introduces conflict among the Circuits." (Pet. 12). This statement disregards the facts and, once again, reflects Mr. Mulligan's ignorance of the law. Mrs. Allnutt cannot have an "interest separate from that of her husband" in entireties property. *Bruce v. Dyer*, 309 Md. 421 (1987). "[N]either spouse owns an undivided half interest in entirety property; the whole entirety estate is vested and held in each spouse and continues in the survivor." *Id.* at 427-428.

2. Even if Mrs. Allnut had an ownership interest in the Property, the doctrines of res judicata, collateral estoppel, equitable estoppel and waiver bar the Complaint.

Even assuming *arguendo* that Mrs. Allnutt had an ownership interest in the Property, which she obviously does not, the doctrines of waiver, res judicata, collateral estoppel and equitable estoppel are sufficient to justify the grant of

summary judgment by the Bankruptcy Court (App. 52). That being the case, Mr. Mulligan has no standing or legal right to bring the instant matter before the Court.

Under the principles of *res judicata* (claim preclusion) and collateral estoppel (issue preclusion), Mrs. Allnutt is precluded from relitigating issues that have been fully and fairly tried in a prior proceeding, *i.e.*, the issue of Fred Allnutt's sole ownership of the Property. *First Union Commercial Corp. v. Nelson (In re Varat Enterprises, Inc.)*, 81 F.3d 1310 (4th Cir. 1996). As Mr. Mulligan correctly observes, there are three requirements for the application of *res judicata*: (1) there must be a valid final judgment on the merits in the prior adjudication; (2) the claim presented in the current action must be identical with the claim determined in the prior adjudication; and (3) the parties in the current action must be the same or in privity with the parties to the prior adjudication. *Kenny v. Quigg*, 820 F.2d 665, 669 (4th Cir. 1987). The doctrine of *res judicata* applies in the bankruptcy context. *Grogan v. Garner*, 498 U.S. 279 (1991); *In re Varat*, 81 F.3d at 1315.

In order for collateral estoppel to apply, the following requirements must be met: (1) there must be a valid final judgment on the merits in the prior adjudication; (2) the issue presented in the current action must be identical with the issue decided in the prior adjudication; (3) the party against whom collateral estoppel is asserted must be the same or in privity with the party to the prior adjudication; and (4) the party against whom collateral estoppel is sought must have had a fair opportunity to be heard with respect to the issue. *Combs v. Richardson*, 838 F.2d 112 (4th Cir. 1988). The doctrine of collateral estoppel applies in the bankruptcy context. *Id.*

Mrs. Allnutt undoubtedly is in privity with Fred Allnutt for purposes of *res judicata* and collateral estoppel as "there is sufficient identity between [Mrs. Allnutt and Fred Allnutt] to apply the principles of *res judicata* and give preclusive effect to the prior judgment." *Meza v. General Battery Corp.*, 908 F.2d 1262, 1266 (5th Cir. 1990). As noted by the Bankruptcy Court,

> [t]here is no doubt, based upon the record in this case, that the debtor [Fred Allnutt] is the sponsor of the instant lawsuit, as its true beneficiary and real party in interest. As the wife of the debtor, [Mrs. Allnutt] is an insider who shares with him an identity of interest. 11 U.S.C. § 101(31).

(App. 27). In fact, a most telling incident occurred at the March 11, 1999 Sheriff's Sale – Mr. Mulligan appeared as Mrs. Allnutt's counsel to resist Associates' efforts to sell the Worcester County real estate and filed documents with the State court in an unsuccessful effort to stop or delay the sale. Accompanying Mr. Mulligan were Fred and Joanne Allnutt. Joanne Allnutt said almost nothing during the negotiations, all of which were conducted by Fred Allnutt through Mr. Mulligan. Shockingly, it was revealed that Mr. Mulligan failed even to inform his client, *Mrs.* Allnutt, of the prior evening's settlement negotiations, communicating instead only with her husband, Fred Allnutt.

Mr. Mulligan cites *Douglas v. First Security Fed. Sav. Bank, Inc.*, 101 Md. App. 170 (1994) and *Ungast v. LaFontaine*, 189 Md. 227 (1947) to support the proposition that Mrs. Allnutt was not in privity with Fred Allnutt, when, in fact, these cases point out the fallacy of Mr. Mulligan's arguments. The entire basis of the Complaint rests on Mr.

Allnutt's mistaken belief that she owned the Property as a "tenant by the entireties," a form of tenancy Associates previously demonstrated does not exist. Accordingly, if we follow Mrs. Allnutt's argument to its logical conclusion, she indubitably had a "direct interest in the subject matter of the [litigation regarding the Property]," and therefore was in privity with Fred Allnutt.

In addition to the doctrines of *res judicata* and collateral estoppel, there are two equitable principles which also served to bar Mrs. Allnutt from relitigating the issues presented in the Complaint. "The doctrine of equitable estoppel allows 'a person's act, conduct or silence when it is his duty to speak,' to preclude him from asserting a right he otherwise would have had against another who relied on that voluntary action." *In re Varat*, 81 F.3d at 1317, quoting BLACK'S LAW DICTIONARY 538. "Similarly, traditional waiver principles come into play when a party voluntarily or intentionally relinquishes a known claim right." *Id.* Mrs. Allnutt's conduct falls squarely within each of these principles.

In the District Court Litigation Judge Smalkin conclusively determined that the Property belonged to Fred Allnutt and thus was properly part of the bankruptcy estate. This fact enabled the Bankruptcy Court to exercise its authority to enter the Sale Order. Mrs. Allnutt attended numerous hearings concerning the ownership of the Property, including the hearing that resulted in the Sale Order. The Trustee previously testified that despite her presence at various proceedings involving the Property and others' competing claims of title thereto – including claims made by her own children to ownership of the same Property – at no time prior to the filing of the Complaint did Mrs. Allnutt

ever assert any interest in the Property (App. 27). Mrs. Allnutt waived any rights she had in the Property when she failed to assert them at the time that the Bankruptcy Court entered the Sale Order. Mrs. Allnutt's deliberate failure or refusal to participate in the litigation concerning the approval of the Sale Order, and her failure timely to appeal the Sale Order, precluded her from asserting her alleged ownership interests in the Property at three years later. *Veltman v. Whetzal*, 93 F.3d 517 (8th Cir. 1996).

3. The Bankruptcy Court and the Court of Appeals properly imposed sanctions upon Mrs. Allnutt and Mr. Mulligan on the basis of their violations of FED. R. BANKR. P. 9011 and FED. R. APP. P. 38.

In his second "Question Presented," Mr. Mulligan asks whether "the Court of Appeals err[ed] in affirming without comment removal by bankruptcy court and imposition of sanctions. . . ." (Pet. i). Mr. Mulligan apparently takes issue with the sanctions imposed only by the Bankruptcy Court, yet Associates will assume for the purposes of its brief in opposition that Mr. Mulligan also seeks reversal of the Court of Appeals' imposition of additional sanctions. In his Statement of the Case, Mr. Mulligan asserts that: (a) the Bankruptcy Court was not authorized to impose sanctions on the basis of the Complaint filed in the State Court; and (b) that he "fully met" the requirements of FED. R. BANKR. P. 9011 (Pet. 2).

The Bankruptcy Court imposed sanctions upon Mrs. Allnutt and Mr. Mulligan on the basis of the numerous pleadings they submitted to the Bankruptcy Court *after*

removal of the Complaint from the State Court.[1] This is in accord with the voluminous case law which holds that a party cannot be sanctioned in federal court for signing a state court complaint, but sanctions may be imposed for a party's post-removal conduct, including the filing of pleadings post-removal. *Meadow Ltd. Partnership v. Meadow Farm Partnership*, 816 F.2d 970 (4th Cir. 1987) (if, after removal of case, it is shown that a party continued to prosecute its claim and forced the opposing parties to defend the action in the federal court, sanctions may be imposed by the federal court); *Meadow Ltd. Partnership v. Heritage Sav. and Loan Ass'n*, 118 F.R.D. 432 (E.D. Va. 1987) (sanctions imposed for maintaining an action in federal court and filing a brief in opposition to a motion for summary judgment); *Herron*

1. A review of the Bankruptcy Court's docket shows that Appellants filed at least seven pleadings in the Bankruptcy Court after removal of the Complaint from State Court and prior to the February 24, 1997 hearing. Mr. Mulligan also orally advocated the positions presented therein at the February 24 hearing. The written pleadings, and the approximate dates of their filing, are as follows: Joanne A. Allnutt's Objection to Application to Remove and Motion to Remand Complaint to the Circuit Court for Howard County for Lack of Jurisdiction (1/16/97); Joanne A. Allnutt's Motion to Remand Complaint to the Circuit Court for Howard County for Lack of Jurisdiction and Objection to Application for Removal to the United States Bankruptcy Court for the District of Maryland (Baltimore) (1/21/97); Joanne A. Allnutt's Opposition to Chapter 11 Trustee's Motion to Intervene and to Consolidate Adversary Proceedings (1/24/97); Joanne A. Allnutt's Motion to Remand Complaint to the Circuit Court for Howard County, Maryland (1/27/97); Joanne A. Allnutt's Opposition to Chapter 11 Trustee's Motion to Intervene and to Consolidate Adversary Proceedings (1/27/97); Joanne Allnutt's Opposition to the Motion to Dismiss Complaint and Request for Sanctions Filed by the Defendant, Associates Leasing, Inc. (1/31/97); Plaintiff's Memorandum of Law in Reply to Trustee's Memorandum in Support of his Motion to Dismiss (2/24/97).

v. Jupiter Transp. Co., 858 F.2d 332 (6th Cir. 1988) (FED. R. CIV. P. 11 applies the instant the federal jurisdiction is invoked over the proceedings)[2]. "Once a case is removed, the plaintiff is impressed with a continuing responsibility to review and reevaluate his pleadings and where appropriate modify them to conform to Rule 11." 858 F.2d at 335-36. Mrs. Allnutt and Mr. Mulligan continued to press their frivolous claims in the Bankruptcy Court "when a reasonably diligent inquiry at that time would have disclosed the complaint to be without support either in fact or law," *Id.*, and therefore the Bankruptcy Court had the authority to impose sanctions against them pursuant to FED. R. BANKR. P. 9011.

As the Bankruptcy Court noted in great detail in its Memorandum Opinion, Mrs. Allnutt and Mr. Mulligan violated FED. R. BANKR. P. 9011(b) in every manner possible (App. 53-60). "The instant cause of action is so transparently sham and fraudulent that no reasonable finder of fact could determine there to be a genuine dispute as to material fact." (App. 52-53). The Bankruptcy Court continued,

> [T]his Court finds that Mrs. Allnutt and Mr. Mulligan could not have held a reasonable basis for believing that the instant complaint was justified, or that it would generate serious issues of fact, particularly in light of their previous attempt to use the tenancy-by-the-entireties theory.

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2. These cases were decided under FED. R. CIV. P. 11. The same analysis is equally applicable to FED. R. BANKR. P. 9011. *In re Heck's Properties, Inc.*, 151 B.R. 739 (S.D.W.V. 1992); *Matter of King*, 83 B.R. 843 (Bankr. M.D. Ga. 1988).

(App. 57). "The plaintiff's complaint exhibits a blatant disregard for the jurisdiction and authority of the federal courts, including the U.S. Bankruptcy Court, in which her husband, the debtor, voluntarily sought relief from debt." (App. 54). "[The attack by Mrs. Allnutt and Mr. Mulligan on the jurisdiction and authority of this Court] is an affront to the dignity of the judicial system, in bad faith, vexatious and wanton." (App. 54). ". . . Mr. Mulligan committed willful and unethical misconduct in bringing this suit in the state court in the first place, and later by advocating its merits in the bankruptcy court, because in so doing, he advanced an unjust cause for lucre and malice." (App. 57).

It is this same conduct that subjected Mrs. Allnutt and Mr. Mulligan to additional sanctions by the Court of Appeals. In language similar to that found in SUP. CT. R. 42.2, FED. R. APP. P. 38 provides that "[i]f a court of appeals determines that an appeal is frivolous, it may award just damages and single or double costs to the appellee." FED. R. APP. P. 38. The term "frivolous" is not defined in the Federal Rules of Appellate Procedure, and courts of appeal considering this issue have used different terminology in determining whether an appeal is frivolous.

"Sanctions may be imposed when one party proceeds with an argument 'totally lacking in merit, framed with no relevant supporting law, conclusory in nature and utterly unsupported by the evidence.' " *Drexel Burnham Lambert Group, Inc. v. Claimants Identified on Schedule 1 (In re Drexel Burnham Lambert Group, Inc.)*, 995 F.2d 1138, 1147 (2nd Cir. 1993) *quoting United States v. Potamkin Cadillac Corp.*, 689 F.2d 379, 381-82 (2nd Cir. 1982). "Sanctions are appropriate when the result of an appeal is obvious and the arguments of error are wholly without merit." *Mir v. Little*

Co. of Mary Hosp., 844 F.2d 646, 653 (9th Cir. 1998). "A frivolous appeal is one which 'involves legal points not arguable on their merits.' " *Travelers Ins. Co. v. Liljeberg Enter., Inc.*, 38 F.3d 1404, 1413 (5th Cir. 1994) *quoting Olympia Co. v. Celotex Corp.*, 771 F.2d 888, 893 (5th Cir. 1985). In imposing sanctions upon Mrs. Allnutt and Mr. Mulligan, the Court of Appeals recognized that their appeal from the District Court was frivolous under any definition.

B.

THE CLAIMS AND ISSUES PRESENTED BY THE PETITION ARE NOT IMPORTANT FOR CONSIDERATION BY THE COURT, SINCE THE DECISION BELOW WAS FACT-SPECIFIC AND DOES NOT IMPACT ANY OTHER LITIGANTS.

There is no compelling reason to grant the Petition, as the ruling of the Court of Appeals turned upon the facts before it, and it will have absolutely no impact on any other parties who may find themselves in similar situations. Mr. Mulligan's Petition demonstrates that he does not now, nor did he ever understand the subject matter upon which he based the Complaint and subsequent pleadings and memoranda. It is clear that Mr. Mulligan filed his Petition simply because he had the ability to do so. "The jurisdiction of the Supreme Court to review cases by way of certiorari was not conferred upon this Court merely to give the defeated party in the Circuit Court of Appeals another hearing." *Magnum Co. v. Coty*, 262 U.S. 159, 163 (1923). Mr. Mulligan (and perhaps the person who, from behind the scenes, likely has controlled the plaintiff's case from the beginning, Fred W. Allnutt, Sr.) views this Court simply as another appellate court towards which he can direct his utterly meritless and frivolous arguments in a last ditch attempt to extort

a settlement offer from Associates. No such offer was, nor will be forthcoming. Mr. Mulligan's conduct in this case suggests that Mr. Mulligan "considers the judicial system a laboratory where small boys can play." *Clark v. Florida*, 475 U.S. 1134, 1137 (1986) (Mem.) (Burger, C. J.).

"Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for writ of certiorari will be granted only for compelling reasons." SUP. CT. R. 10. Mr. Mulligan has failed to demonstrate *any* reason, let alone a compelling reason, warranting the exercise of this Court's discretion to review the decisions below. There is no conflict among the courts of appeal with respect to any issues ruled upon by the Court of Appeals, the District Court or the Bankruptcy Court. Also notable by their absence are any important federal questions arising from the Court of Appeals' ruling.

As stated above, the only true "Question Presented" by Mr. Mulligan in his Petition is whether sanctions were properly imposed upon him (because only Mr. Mulligan, and not Mrs. Allnutt, is petitioning for a writ of certiorari). Mr. Mulligan failed to address in his Petition why this issue is deserving of the Court's consideration, apparently recognizing the futility of such an attempt. The Court should finally put a stop to the nearly three years of abuse of the legal system perpetrated by Mr. Mulligan, Fred and Joanne Allnutt since the inception of this case on September 27, 1996, and deny the Petition for Writ of Certiorari.

CONCLUSION

Wherefore, and for the reasons set forth above, Respondent Associates Leasing, Inc. respectfully requests that this Court deny the Petition for Writ of Certiorari and award Associates Leasing, Inc. just damages and double costs incurred in defending Petitioner's meritless and frivolous Petition for Writ of Certiorari.

Respectfully submitted,

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